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March 9, 2016

**PLEASE REPLY TO TUCSON**  
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Mark Brnovich  
Arizona Attorney General  
1275 W. Washington  
Phoenix, AZ 85007

RE: Request for Review of Opinion Letter concerning new statutory amendments to  
A.R.S. § 15-393 and the effect on JTED student counts

Dear Attorney General Brnovich:

Enclosed is an opinion letter from this office to Tina Norton, Chief Financial Officer of Pima County Joint Technical Education District, dated March 9, 2016.

Pursuant to A.R.S. § 15-253(B), it would be appreciated if your office would review the opinion and let us know whether your office concurs with, revises, or declines to review the opinion.

Sincerely,

Lisa Anne Smith

c: Tina Norton  
Dr. Alan Storm

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March 9, 2016

**PLEASE REPLY TO TUCSON**  
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**Via Electronic Mail**

Tina Norton  
Business Manager  
Pima County JTED

RE: New statutory amendments to A.R.S. § 15-393 and the effect on JTED student counts

Dear Tina:

You have asked us to provide an opinion as to whether, under the changes made to A.R.S. § 15-393(D)(4) by Section 3 of Senate Bill 1525, 52nd Leg., 2nd Reg. Sess. (Az. 2016) ("SB 1525"), students who have yet to graduate from high school or receive a GED and who were lawfully enrolled in a Pima County JTED program as of January 1, 2016, are to be counted in Pima County JTED's student count for purposes of determining the base level funding for which JTED is eligible, even if those students obtain a high school diploma or GED before completing their JTED program. Our opinion is that the answer is yes. Admittedly, the general effect of the amendment to A.R.S. § 15-393(D)(4) is to remove from a JTED's base level funding student count those students who graduate from high school or earn a GED. In our opinion, however, the final sentence of the new language preserves funding for existing students who did not have a diploma or GED as of January 1, 2016, regardless of whether they earn one before completing the program in which they are enrolled. The basis for our opinion follows.

**I. Background Information**

Like other school districts in Arizona, Pima County JTED receives funding from taxpayers based on its student count multiplied by a dollar amount that the legislature has set as the "base level" of support for students. A.R.S. § 15-393(C)(11); A.R.S. §15-901 et seq. A JTED is statutorily authorized to enroll as a student, "any person ... without regard to the person's age or high school graduation status." A.R.S. § 15-393(D)(4). There are no limits on this authority to allow students of any age or graduation status to enroll in a JTED or to participate in a JTED program. There are, however, exceptions that affect whether any enrolled student can be counted for

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funding purposes. *Id.* Specifically, the following exclusions define those students who are not counted for funding purposes:

- (a) A student in a kindergarten program or in grades one through nine who enrolls in courses offered by the joint technical education district shall not be included in the joint district's student count or average daily membership.
- (b) A student in a kindergarten program or in grades one through nine who is enrolled in career and technical education courses shall not be funded in whole or in part with monies provided by a joint technical education district, except that a pupil in grade eight or nine may be funded with monies generated by the five cent qualifying tax rate authorized in subsection F of this section.
- (c) A student who is over twenty-one years of age shall not be included in the student count of the joint district for the purposes of chapter 9, articles 3, 4 and 5 of this title.

*Id.* Prior to SB 1525, therefore, a JTED received funding for any student not enrolled in kindergarten or grades 1 through 9 until that student turned twenty-two years of age even if the student was a high school graduate or had a GED.

## **II. Senate Bill 1525 and the Amendment added thereto**

Recently, Governor Ducey signed into law SB 1525, which provides a comprehensive overhaul of and emergency funding measures for Arizona JTED programs. In addition to the other provisions of SB 1525, Section 3 of the bill amends A.R.S. § 15-393(D)(4) to add another category of students who are not included in the student count for calculating funding levels. Specifically, as of July 1, 2016, any student who “has graduated from high school or received a general equivalency diploma” is excluded in the student count for calculating JTED funding (the “Exclusion”). This Exclusion has been added to the current provision that already excludes from the student count any JTED enrollees who are over twenty-one years of age. *See* A.R.S. § 15-393(D)(4)(c).

Initially, the only change to §15-393(D)(4)(c) was the Exclusion set forth above. When SB 1525 was being considered by the Arizona Legislature, the House of Representatives adopted an amendment proposed by Representative Stevens (the “Amendment”). The Amendment added the following language to the Exclusion language set forth above:

A student who has yet to graduate or receive a general equivalency diploma and was lawfully enrolled in a joint technical education district program on January 1, 2016 may continue to participate in the program after the effective date of this amendment to this section.

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SB 1525, Stevens Floor Amendment Number 1, <http://www.azleg.gov/legtext/52leg/2r/adopted/h.1525floorstevens.pdf>.

**III. The Exclusion generally removes funding for high school graduates and GED holders attending JTED programs but the Amendment retains funding for a limited group of students who would otherwise be subject to the Exclusion.**

The Amendment is ambiguous for two reasons. First, on its face, it defines students who may “participate in the program” without explicitly clarifying whether those students are to be included in the student count for funding purposes. The Exclusion, however, does not address who can enroll in a JTED program; it addresses only who will receive funding. Second, the language of the Amendment refers to students who *have yet* to graduate or receive a GED. The Exclusion does not impact funding for students who *have yet* to graduate or receive a GED; it impacts funding for students who *have* graduated or received a GED. In other words, the Exclusion eliminates funding for students who *do have* a high school degree and the Amendment addresses the participation of students who *do not have* a high school degree – whose funding is not impacted at all by the Exclusion or the prior language of the statute. If the Amendment is not construed as we have done, it neither carves out an exception to the Exclusion nor does it appear to have any purpose or effect. In other words, unless interpreted to retain funding for a limited portion of students impacted by the Exclusion, the Amendment would appear superfluous.

When construing a statute, the primary goal is give effect to the legislature’s intent, and the plain language of statute itself is the first place to seek this legislative intent. *Cave Creek Unified Sch. Dist. v. Ducey*, 231 Ariz. 342, 350, ¶ 21, 295 P.3d 440, 448 (App.) *aff’d*, 233 Ariz. 1, ¶ 21, 308 P.3d 1152 (2013). Even where statutory language is clear and unambiguous, however, a court “will not employ a plain meaning interpretation that would lead to a result at odds with the legislature’s intent.” *Id.* Furthermore, in giving effect to legislative intent, “each word or phrase must be given meaning so that no part is rendered void, superfluous, contradictory or insignificant.” *Weitekamp v. Fireman’s Fund Ins. Co.*, 147 Ariz. 274, 275, 709 P.2d 908, 909 (App. 1985).

The only meaningful interpretation of the Amendment is that it is intended to ensure funding for a subset of the currently enrolled JTED students who might, because of the Exclusion, otherwise be excluded from the student count following the effective date of SB 1525.

**A. The Amendment must address student funding and not merely student participation and must retain funding for some subset of the group excluded from funding under the Exclusion.**

The Amendment must address funding and not merely the right to participate. Both the Exclusion and the Amendment are located in subsection (c) of § 15-393(D)(4), and subsections (a) through (c) of §15-393(D)(4) all address funding; none addresses the ability to participate in a

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program.<sup>1</sup> Specifically, the three exceptions define those students who “shall not be included in the joint district's student count or average daily membership” (subsection (a)); students who “shall not be funded in whole or in part with monies provided by a joint technical education district” (subsection (b)) and those students who “shall not be included in the student count of the joint district for the purposes of chapter 9, articles 3, 4 and 5 of this title” (subsection (c)). The new Exclusion adds a group of students who, while they may participate in a JTED program, “shall not be included in the student count ... for the purposes of” funding. The Amendment, therefore, only makes sense if it carves out a subset of those newly un-funded students who retain funding despite the Exclusion. If it does not do so, it does nothing.

The only reasonable interpretation of the Amendment that does not render it meaningless is that the Amendment allows for continued funding for those students who did not have a GED or high school diploma on January 1, 2016, and were enrolled in a JTED program on that date but who will obtain a diploma or GED before completing their JTED program. In other words, currently enrolled students who were eligible for funding as of January 1, 2016, remain eligible for funding until they complete the program in which they are already enrolled, even if they earn a high school diploma or GED before they complete the program. If the Amendment does not preserve funding for this group of current students, it does not add anything to the statute as it currently exists (which already allows this group of students to “participate in the program”) nor does it add anything to the Exclusion (which already retains funding for students who have yet to graduate).

B. To interpret the Amendment otherwise would violate basic rules of statutory interpretation.

If the Amendment simply allows students who have graduated from high school to participate in a JTED program, it is redundant because the definition of student set forth in A.R.S. § 15-393(D)(4) already does that. If the Amendment merely preserves funding for students who have yet to obtain a high school degree, it is redundant because such individuals are already considered “students” to be included in the JTED student count. And, looking to SB 1525 specifically, those who have “yet to graduate” are not impacted by the Exclusion. Neither of these interpretations can be justified under basic rules of statutory construction, because Arizona courts “do not interpret statutes so as to render any provision redundant.” *State ex rel. Horne v. AutoZone, Inc.*, 229 Ariz. 358, 362, ¶ 18, 275 P.3d 1278, 1282 (2012) (citation omitted); see also *Robbins v. Arizona Dept. of Econ. Sec.*, 232 Ariz. 21, 24, ¶ 15, 300 P.3d 556, 559 (App. 2013) (“we do not interpret statutes to contain ‘useless provisions’ unless no other construction is possible,” citing *City of Tucson v. Clear Channel Outdoor*, 209 Ariz. 544, 553, ¶ 34, 105 P.3d 1163, 1172 (2005)).

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<sup>1</sup> SB 1525 added an additional exclusion to those discussed in this opinion. It is found in A.R.S. § 15-393(D)(4)(d). As with subsections (a) through (c) of A.R.S. § 15-393(D)(4), subsection (d) also addresses funding and student count issues.

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**IV. Conclusion**

After passage of the Exclusion, but absent the Amendment as interpreted here, students currently enrolled in a JTED program with plans to continue their technical education after graduation or receipt of a GED would not continue to receive funding. Obviously, this could create a hardship for those currently enrolled students who have put in many months of work towards completion of a technical program, relying on funding to complete the program, but who will graduate or obtain a GED before they complete the technical program in which they are enrolled. The reasonable interpretation proffered above for the Amendment avoids such unfair results and is consistent with what appears to be the legislative intent in adding the Amendment during the legislative process. Under this interpretation, the legislative objective of eliminating funding in the future for high school graduates is accomplished without unnecessarily harming current students who have relied on the prior statutory language.

For these reasons, it is the opinion of this office that the Amendment evinces legislative intent to continue to include in the student count those students who were enrolled in JTED programs and who had yet to graduate from high school or receive a GED as of January 1, 2016, until they complete the program in which they were enrolled, without regard to their graduation status after January 1, 2016.

Pursuant to your request, I will be sending this letter to the Attorney General to request a review of it. Please let me know if you need any further assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Anne Smith", with a stylized flourish at the end.

Lisa Anne Smith